

REMARKS

Claims 25-32 and 49-53 are pending in the application.

Claims 25-32 and 49-53 have been rejected.

Claims 25-27 and 30-32 have been amended.

I. **DOUBLE PATENTING REJECTION OF CLAIM 29**

Claim 49 was rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,731,599. This rejection is respectfully traversed.

As noted in Applicant's preliminary amendment, Claim 49 corresponds to claim 50 first presented in the application that matured into US 6,731,599. In that application, claim 50 was subject to a restriction/election requirement (mailing date 01/09/2003) as drawn to a different invention from that claimed in issued claim 11 (claim 55 in that application). Thus, Applicant respectfully submits that an obviousness double-patenting rejection cannot be maintained, as the two respective claims were determined by the USPTO during prosecution of the prior application to constitute separate inventions.

Accordingly, Applicant respectfully requests that the Examiner withdraw this rejection.

II. REJECTION UNDER 35 U.S.C. § 102

Claims 25 and 29 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kadambi, et al. (US 6,104,696). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Applicant has amended independent Claims 25 and 29. Support for these amendments may be found in the specification, page 10, lines 10-15.

Applicant notes that the priority date of the Kadambi reference is June 30, 1999 - only one day prior to the filing date of Applicant's application. Based on this, Applicant respectfully requests that the Examiner re-review the Kadambi reference (including Col. 24, line 15 thru Col. 25, line 30) and re-examine Claims 25 and 29 (in view of the amendments made) to provide the Applicant an opportunity to respond to any new or continued rejection(s) to the amended claims that may be raised by the Examiner.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(e) rejection of Claims 25 and 29.

III. REJECTION UNDER 35 U.S.C. § 103

Claims 26-28 and 30-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kadambi, et al. (US 6,104,696) in view of Muller, et al. (US 6,016,310). Claims 49-53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kadambi, et al. (US 6,104,696). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness,

three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

With respect to dependent Claims 26-28 and 30-32, the cited portion of Muller does not appear to disclose using source-destination pairs such that the generated identification is based on a data packet's source address and destination address, and wherein the identification is pseudo-random for different source-dest pairs and same for same source-dest pairs. See, independent Claims 25 and 29, as amended.

With respect to independent Claims 49, 51 and 53, the Office Action has failed to establish prima facie that Kadambi discloses, teaches or suggests that "selecting the grouping of ports further comprises selecting the ports that are secure" (Claims 49, 53) or "a third circuit to select the grouping of ports that are secure" (Claim 51). Selecting the grouping of ports that is "active" is not equivalent, or even similar, to selecting the grouping of ports that are "secure." See, Specification, page 8, line 20 thru page 9, line 2.

With respect to independent Claims 50 and 52, the Office Action concedes that Kadambi does not teach to select another port from the plurality of ports to replace a failed port, but further

argues that since Kadambi simply teaches that any number of ports may be used, this also teaches that when a port fails, another port is selected which replaces the failed port in the trunk group. Kadambi simply does not teach what the Office Action argues. In fact, Kadambi teaches that if a trunk port goes down or fails for any reason, notification is provided to change the trunk group table and VLAN tables to “make sure that the appropriate port bit maps are changed to reflect the fact that a port has gone down and is therefore removed.” When the trunk port is reestablished, the tables are similarly updated. Col. 25, lines 31-40. Thus, there is no disclosure, teaching or suggestion in Kadambi to replace a failed port with another port in order to maintain the original bandwidth of the trunk.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejections of Claims 26-28, 30-32 and 49-53.

IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

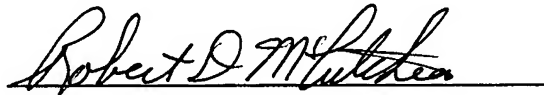
The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date:

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